

**REMARKS**

The Examiner's action dated November 23, 2004, has been received, and its contents carefully noted. A new dependent claim 14 has been added. Claims 1-14 are pending. Claims 1-6 and 12 are presently withdrawn.

The rejection of claims 7, 11 and 13 as being unpatentable over WO '465 is traversed for the reason that this reference does not disclose or suggest either the method defined in claims 7 and 11 or the device defined in claim 13.

Firstly, the applied reference discloses only an arrangement in which a liquid is poured from a container 36 into a dispenser 20 by manual operation, i.e. a human user picks up container 36 and pours its contents into dispenser 20. Alternatively, as shown in Figure 1 of the reference, a dispenser is brought into position beneath a container 38, 40 or 42 and liquid is allowed to flow from the container into the dispenser.

The present invention, as disclosed in the Application, is directed to a method and device that use automatic mechanical means, such as conveyers and robots, in order to displace the principal tank and transfer coating product from the principal tank toward a secondary tank. The

application claims must, of course, be interpreted in light of the Specification and it is a well recognized principle of patent law that, according to 35 U.S.C. §112, claim limitations shall be construed to cover the corresponding structure, material or acts described in the Specification.

The present Specification only discloses that the operations defined in claim 7 and the means defined in claim 13 are performed by automatic mechanical units, and those skilled in the art would never consider performing by hand the operations for supplying coating products to at least one atomizer of an installation for spraying coating products. There is absolutely no basis for the view that these claims are rendered "obvious" by the manual procedures that would of necessity be performed on the basis of the teaching of the applied reference.

The Examiner is directed to *In re Bernhart et al*, 163 U.S.P.Q. (BNA) 611 (CCPA, 1969), which states: "The claims also define the invention as having plotting means for drawing lines or for illustrating an object. When such functional language is used in a claim, 35 U.S.C. 112 states that "such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." The specification here mentions only mechanical drafting

machines. The claims therefore cover, under section 112, only such mechanical drafting machines and their equivalents. We know of no authority for holding that a human being, such as a draftsman, could ever be the equivalent of a machine disclosed in a patent application, and we are not prepared to so hold in this case."

Attention is also directed to Kartarik v. Remote Transaction Technologies, 812 F. Supp. 910, 915, 26 USPQ2d 1284, 1288 (D. Minn. 1993) (access "'means'" does not include human operation; "'A human being is not deemed the equivalent of a machine, particularly in cases such as the present case, where there is no support for the use of a human being in the specification.'").

While *Kartarik* is particularly applicable to the subject matter of claim 13, please note that *Bernhart* specifically refers to the fact that, according to 35 U.S.C. 112, claims defining method steps are interpreted to cover the acts described in the Specification and equivalents thereof. Those skilled in the art would readily understand that, in view of the disclosure of the present Application, manual actions would never be considered equivalent to the actions performed by the automatic devices disclosed in the Application.

Furthermore, the present invention is directed to spraying coating products, and the reference does not appear to be directed to apparatus and methods for performing such a function. None of the products mentioned, by way of example, on page 1 of the reference Specification would normally be considered to be a coating product.

The alternative basis for rejecting the claims, described at page 4 of the Specification, can also not be considered to suggest the claimed invention. Even if, as described on page 13 of the reference Specification, containers 38, 40, 42, etc. are mounted on a wheeled cart, there is no disclosure in this reference that the containers would then be brought to the vicinity of a dispenser, in a manner analogous to that disclosed in the present Application. Rather, it would still be necessary to manually transport each dispenser into position beneath one of the tubes 50.

Claim 11 further distinguishes over the applied reference by its recitation of filling the principal tank with a sufficient quantity for coating the same object or one side of the same object by different atomizers. The applied reference provides absolutely no disclosure of supply containers necessarily having this capacity. Indeed, in the embodiment shown in Figures 2 and 3 of this reference, the container

appears to contain no more than a quantity of liquid for filling one dispenser and it is indeterminate whether the containers shown in Figure 1 of the reference have the capacity defined in application claim 11.

Finally, with regard to the explanations of the reasons for the holding of obviousness, presented in the paragraph extending from the bottom of page 4 to the top of page 6 of the Action, it must be noted that these do not include any explanation of why those skilled in the art would have a motivation to make the suggested modifications.

With regard to the Examiner's interpretation of 35 U.S.C. 112, sixth paragraph, attention is drawn to the decisions quoted above, which make clear that, particularly with respect to "means" recitations, based on a disclosure that such means are constituted by machines, a human being can never be the equivalent of such "means".

Added claim 14, which depends from claim 7, clearly presents further limitations that distinguish over the applied reference.

In view of the foregoing, it is requested that the rejections of record be reconsidered and withdrawn, that the claims under examination be allowed, along with allowable claims

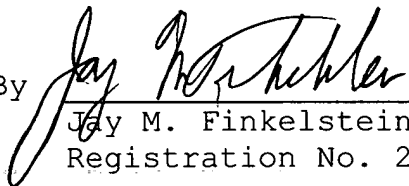
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8-10, and that the restriction requirement be withdrawn and  
claims 1-6 and 12 be examined on the merits and allowed.

If the above amendment should not now place the  
application in condition for allowance, the Examiner is invited  
to call undersigned counsel to resolve any remaining issues.

Respectfully submitted,

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